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Supreme Court, U.S.
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In The
Supreme Court Of The United States

Anthony J. Allegrino II,

Petitioner,

v.

The State Bar of California,

Respondent.

On Petition for Writ of Certiorari
To The California Supreme Court

PETITION FOR WRIT OF CERTOIRARI

Anthony J. Allegrino II
367 Windsor Highway, PMB 149
New Windsor, NY 12553
(914) 837-1765

Counsel for Petitioner Pro Se

Dated: January 8, 2008

QUESTIONS PRESENTED

1. Whether the failure of Petitioner to receive reasonable notice and an opportunity to be heard in the State Bar of California Review Department Proceedings where additional discipline was imposed including increasing the Hearing Judges discipline of "suspension" to "disbarment" is a violation of the Fourteenth Amendment to the United States Constitution?
2. Whether the conduct of a "sham proceeding" by bias prosecutors and judges where material evidence was admittedly altered, other material evidence secreted, and witnesses tampered with a violation of the Fourteenth Amendment to the United States Constitution?

PARTIES TO THE PROCEEDING BELOW

Petitioner Anthony J. Allegrino II ("Allegrino") was the Petitioner to the California Supreme Court, Appellant and Appellee to the State Bar of California Review Department, and Respondent to the State Bar of California State Bar Court.

The State Bar of California ("State Bar") was the Respondent to the California Supreme Court, Appellant and Appellee to the State Bar of California Review Department, and Petitioner to the State Bar of California State Bar Court.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Anthony J. Allegrino II ("Allegrino") respectfully Petitions for a writ of certiorari to review the judgment of the California Supreme Court.

OPINIONS BELOW

The opinion of the California Supreme Court denying review is attached as *Appendix A.*

The opinion of the State Bar of California Review Department imposing discipline is attached as *Appendix B.*

The opinion of the State Bar of California State Bar Court imposing discipline is attached as *Appendix C.*

JURISDICTION

The California Supreme Court denied Petitioner's Petition for Review on October 10, 2007.

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides: "Nor shall any State deprive any person of life, liberty, or property, without due process of law."
U.S. Const. Amend. XIV.

STATEMENT OF THE CASE

Respondents, the State Bar of California ("The State Bar"), did not provide Petitioner with reasonable notice or an opportunity to be heard in the State Bar of California State Bar Court Review Department Proceedings.

The Fourteenth Amendment to the United States Constitution provides "nor shall any State deprive any person of life, liberty, or property, without due process of law."

The requirements of "procedural" due process are met by due notice and a complete hearing under established rules of procedure before a judicial tribunal of competent jurisdiction. The notice must be reasonable and a reasonable opportunity to be heard and present claims or defenses must be had with due regard to the nature of the proceeding and character of rights affected. *Standard Oil Co. v. State of N.J. by Parsons*, 71 S.Ct. 822, 341, U.S. 428, 95 L.Ed. 1078; *Dohany v. Rogers*, 281 U.S. 362, 74 L. Ed. 904; 68 A.L.R. 434; *Holt v. Com. of Va.*, 381 U.S. 131, 14 L.Ed. 2d 290; *Boddie v. Connecticut*, 401 U.S. 371.

The issue of no "notice" was raised by Petitioner in a request for reconsideration, which was denied, and in the Petition for Review to the California Supreme Court which was denied. *See Appendix*'s *A, D, E.*

Petitioner received no notices whatsoever from The State Bar in the review process.

Petitioner did request review from the State Bar of California State Bar Court Review Department on December 18, 2006, and had also filed two cases, one on September 7, 2006, in the Federal Court in the Northern District of California,

Case Number C06 5490 MJJ, and one in January 17, 2007, Case Number C07-00301 MJJ seeking to enjoin the State Bar Hearing Judges suspension order. *See Appendix J.*

According to the State Bar of California State Bar Court Review Department's Opinion on Review, The State Bar claims Petitioner "failed" to participate in Review of the Decision in Case Number 04-0-12846 which is untrue.

Petitioner was not given an opportunity to participate in the Review of the Decision in Case Number 04-0-12846 nor reasonable notice of any proceedings in this review process by The State Bar.

Additionally, The State Bar of California State Bar Court Review Department's Opinion on Review brands Petitioner a liar who has committed perjury and offered false testimony as additional Findings in direct contradiction to certified transcripts, police reports, and an email from State Bar Prosecutor's Timothy Byer and Ronald Magnuson who have both admitted crimes in open Court with impunity.

State Bar of California Rule of Procedure § 302 states "within forty-five (45) days after service of the request for review or service by the Clerk of the trial transcript, whichever occurs later, the appellant shall file with the Clerk and serve an opening brief" but Petitioner neither received a brief from The State Bar nor any transcript at any time.

Furthermore, State Bar of California Rule of Procedure § 305(d), Subdivision (a) states "The Review Department shall file its Opinion within ninety (90) days of taking the matter under submission, unless a shorter period for filing the opinion in an expedited proceeding is required by statute, by Supreme Court rule, or by these rules."

Petitioner received a Request for Review from State Bar of California Prosecutor Timothy Byer on September 23, 2005, which would have meant Byer's brief was due no later than 45 Days from that date and the Review Department's Decision should have been due 90 days from that date (Byer's Opening Brief due date) or 135 days maximum together – not including preparation of the record – if such record was prepared – and assuming Petitioner was not submitting a brief in Response as claimed – this Matter was to be closed under the Rules by Monday, May 8, 2006. However, the Decision is dated April 22, 2007, or nearly 1 year longer than permitted by the Rules.

Petitioner had submitted a joint request for review and was awaiting the transcript which never came to prepare Petitioner's Opening Brief. *See Appendix E.*

State Bar of California California Rule of Procedure § 301(c) states "if more than one party requests review: the cost of the transcript shall be divided equally among the parties requesting review".

Petitioner was informed by the State Bar of California Clerk's Office in December 2005 that the State Bar had requested Review, ordered the transcript, and paid for the transcript and that, in acknowledging the request for joint-review, Petitioner would be notified when the transcript was ready and of his share of the transcript costs but Petitioner was never notified of any assessment or transcript being ready to be picked-up by the State Bar.

Petitioner never received any transcript or other notices regarding the review process and was unable to determine the status of the transcript in subsequent calls to The State Bar.

Subsequently, Petitioner timely requested reconsideration from The State Bar of California State Bar Court Review Department which review was denied. *See Appendix D.*

Petitioner's timely request for review to the California Supreme Court was also denied. *See Appendix A.*

Secondly, Respondents are so biased that they can not conduct the fair,impartial hearing required if Petitioner is to be afforded due process of law guaranteed by the Constitution of the United States. Quoting from *In re Murchison*, 349 U.S. 113:

> A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest can not be defined with precision. Circumstances and relationships must be considered. This Court (the United States Supreme Court) has said, however, that 'every procedure which would offer a possible temptation to the average man as a judge...not to hold the balance nice, clear, and true between the state and the accused, denies the latter due process of law' *Tumey v. Ohio*, 273 U.S. 510, 532, 71 L.Ed. 749, 758, 47 Sup. Ct. 437, 50 A.L.R. 1243. Such a strigent rule may bar trial judges who have no actual bias and who would do their very best to weight the scales of justice equally between the contending parties. But to perform its high function in the best way 'justice must satisfy the appearance of justice'. *Offutt v. United States*, 348 U.S. 11, 99 L. Ed. 11, 75 Sup. Ct. 11.

The California disciplinary process places Petitioner, an Attorney,

in the hands of persons who have an apparent personal interest in the matter in controversy. This invades the very core of due process of law. "...to resort to the protection offered by state law in these cases would effectively deprive them of their property, that is, their right to practice their professions, without due process of law and that irreparable injury would follow in the normal course of events." *Miller v. Aldridge*, 212 Ala. 660, 103 So. 835; *Miller v. Florida State Board of Dentistry*, 296 F. Supp. 1259.

The issue of "bias" was raised by Petitioner to the State Bar Court numerous times in Motions for dismissal, discovery Sanctions, and requests for recusal by both prosecutors. *See Appendix J, H, I, L*.

Also, the issue was raised in Petitioner's brief to the California Supreme Court, *See Appendix A*, and to the federal courts, *See Appendix J*.

Respondent's (The State Bar and The State Bar Prosecutors) refusal to recuse themselves from the trial of Petitioner in light of their alleged violations of state law, prosecutorial misconduct, witness tampering, and falsification of evidence, establishes beyond cavil that the prosecution of Petitioner by Respondent's to revoke his license is no more than another step in the process of securing to themselves a captive, defenseless legal business within the State of California.

On May 3, 2005, State Bar Prosecutor Ronald Magnuson ("Magnuson") wrote an email to State Bar Prosecutor Timothy Byer ("Byer") concerning California Evidence Code § 1402 and altered writings entitled "The Allegrino Evidence Problem". *See Appendix F*.

Magnuson's E-mail to Byer states "the alteration only becomes

material when the document is offered into evidence".

At the time, such evidence was merely marked for identification and had been submitted to the State Bar Court by Magnuson and Byer as evidence against Petitioner.

On May 5, 2005, Byer gave Magnuson's Email to Petitioner after Petitioner told Byer he was going to the district attorney.

On May 5, 2005, Byer stated to Petitioner "I will make sure you pay dearly for this" and "your dead" after Petitioner tricked Byer into believing he (Petitioner) had copies of some documents (which Petitioner did not) which were different that those submitted to the Court and subsequently Byer admitted on the record that he (Byer) had falsified evidence and secreted material evidence in Petitioner's Hearing. *See Appendix I.*

Byer and Magnuson had both brought a State Bar Case against Petitioner just prior to this Case in which Petitioner was given a 12 month suspension. In that proceeding, Byer and Magnuson both had threatened to have Petitioner disbarred if he did not admit culpability and take a substantial suspension. Byer had stated to Petitioner in that previous proceeding "There is great support for your disbarment at the State Bar – and it will happen". Magnuson is Byer's boss at the State Bar.

Magnuson also threatened Petitioner with retaliation prior to the Hearing at the State Bar for filing a compliant against him with The State Bar and Los Angeles Police Department days before the Hearing was to start. On May 5, 2005, Maguson stated to Petitioner "you do not know who you are dealing with" and "your ass is mine – guaranteed".

The threats by Byer and Magnuson were made prior to the Hearing in Case Number 04-0-12846 (the Case at Bar).

State Bar of California Hearing Judge Ronald Talcott ("Judge Talcott") turned a blind eye to the misconduct by these prosecutors while condemning the same conduct on the record. However, the proceeding was had and a finding was issued against Petitioner.

Petitioner had filed both a Bar Complaint and a criminal complaint against Byer and Magnuson prior to the Hearing on May 9, 2005.

The State Bar had agreed to forward the Case against State Bar Prosecutor Byer to an outside counsel but that determination was recinded by State Bar brass. *See Appendix H.*

Furthermore, Petitioner made a Motion to terminate the proceedings which Judge Talcott ignored and never issued a ruling on at any point in the Case.

Additionally, Judge Talcott continued the Hearing on May 9, 2005, Despite Petitioner's objections on the record that Court Ordered Discovery which was necessary and exculpatory was being withheld and not being turned over.

It should be noted that both the State Bar Prosecutor's Byer and Magnuson and the State Bar Judge Talcott are both employed by the same organization which is the Respondent in this Case: The State Bar.

New Jersey State Board of Optometry v. Nemitz, 21 N.J. Super. 18, 90 A.2d 740, is illustrative of Petitioner's position. In this case, a New Jersey Court in a situation similar to the instant one found that a board member, who was in direct competition with the accused optometrist, had made a complaint, had obtained services of a patient to act as investigator, and had provided funds, had therefore, clearly gone beyond his mere official duties and should have disqualified himself.

This Court (The United States Supreme Court) has not altered its position as to protection of constitutionally protected rights. *See Bodie v. Connnecticut*, 401 U.S. 134 (1971), 28 L.Ed. 113, in which the following principle is stated:"our cases further establish that a statute or a rule may be held constitutionally invalid as applied when it operates to deprive an individual of a protected right although its general validity as a measure enacted in the legitimate exercise of state power is beyond question..."

Petitioner submits that it is evident from the history of harassment by the State Bar of California that the Respondent and its staff which had contact with Petitioner are biased and prejudiced against Petitioner so that Petitioner can not receive a fair, impartial hearing at their hands and that Petitioner would suffer great and irreparable harm if Respondent's were permitted to decide whether he has the right to practice law within the State of California and indeed his very existence in the State of California.

Respondent's believe there is nothing improper about The State Bar Court hearing Petitioner's case nor State Bar Prosecutor's Byer and Magnuson handling Petitioner's case - prosecutor's and judges for the same cause – nor was this grounds for their disqualification.

Furthermore, the conduct by Byer and Magnuson were felonious crimes in the State of California and in violation of California Penal Code §§ 132,134,135 in that documents were altered and offered in an official proceeding as evidence. *See Appendix H.*

Certainly, with the filing of not one but two federal lawsuits against the State Bar of California by Petitioner a presumption of bias must be said to exist by the Defendant in those lawsuits

These Cases were both filed in the Northern District of California seeking to enjoin the State Bar and were Cases C06-05490 MJJ and 07-00301 MJJ.

Additionally, these lawsuits were pending when the discipline was increased against Petitioner by the State Bar of California Review Department and Petitioner was not even given a change to appear and respond to the proceeding.

As authority for Petitioner's position, in *Miller v. Aldridge*, 212 Ala. 660, 103 So. 835, the Supreme Court of Alabama noted:

> the averments of the Petition disclose these Appellees have been active in the prosecution of these charges which they are called upon to hear and determine, and have contributed funds to further the prosecution. It may be conceded, as suggested by counsel for the Appellees, that the petition should be construed as showing their activity and contribution of funds to have occurred prior to their appointment as members of the board, but this would not materially affect the situation. In addition to these averments, it is charged that they are inimical to Appellant, both personally and professionally, have prejudged the case, and stated that so far as they were concerned, his certificate 'now stood revoked'. Under the averments, Appellees are charged with a direct interest in the proceedings against him, and are both prosecutors and judges in the same cause. These averments, for the present purposes, being considered and admitted, we think very clearly place Appellees, within the influence of the rule of disqualification.

The facts of the instant Case clearly show the bias and prejudice which permeated the State Bar of California proceedings.

This Court has stated in the past "to require the Plaintiff's to resort to the protection offered by state law in these cases would effectively deprive them of their property, that is their right to practice their professions, without due process of law and that irreparable injury would follow in the normal course of events." *Gibson v. Berryhill*, 411 U.S. 564, 572-573 (1973).

Hence, this Petition for Certiorari Followed.

REASONS FOR GRANTING THE WRIT

1. This Decision raises important national interests that should be decided by this Court.

   Because the highest State Court of each and every state such as California has broad discretion and authority to discipline licensees in their respective states such as California arbitrary taking of property such as professional licenses without due process impacts important liberty interests across the nation not just in California and not just with respect to this Petitioner.

   This Decision impacts the ability of people across the nation to be employed in their chosen professions without undue or unwarranted interference by Government.

   Furthermore, the decisions of the those states are only reviewable exclusively by this Court.

2. The Decision below conflicts with numerous decisions of this Court and others which hold that where

important property rights are involved such as a professional license individuals are entitled to reasonable notice and opportunity to be heard by the due process clause of the Fourteenth Amendment of the United States Constitution.

Petitioner had filed a timely request for review and two federal lawsuits seeking to enjoin a suspension Order by the State Bar. However, Petitioner received no notice of any proceedings, did not receive a brief or transcript from the State Bar, and was found to have not participated in the review.

Furthermore, the penalty was also imposed outside the scope of the Rules for such proceedings which require a decision in 90 days which would have been due by Monday, May 8, 2006, and not April 22, 2007 (a year later).

All requests for reconsideration or review were denied.

3. The Decision below conflicts with numerous decisions of this Court and others which hold individuals are entitled to fair and impartial proceedings and not "sham proceedings" which are a mere formality by bias prosecutors and judges by the due process clause of the Fourteenth Amendment of the United States Constitution.

Prior to the Hearing in 2005, Petitioner had filed two bar complaints and a criminal complaint against Both Hearing adjudicators for the State Bar who had falsified evidence against Petitioner and submitted this evidence to the State Bar Court.

Furthermore, these actions were admitted by both hearing adjudicators in Court.

Prior to the State Bar increasing the discipline from suspension to disbarment, Petitioner had filed two federal lawsuits seeking to enjoin a suspension order against the State Bar and both hearing adjudicators.

The penalty was also imposed outside the scope of the Rules for such proceedings which require a decision in 90 days which would have been due by Monday, May 8, 2006, and not April 22, 2007 (a year later).

Petitioner was not given a notice to appear at the Review Hearing.

Furthermore, Petitioner's unilateral request for review was ignored by the State Bar.

4. The Decision below denies Respondent any recourse for the taking of his law license without due process.

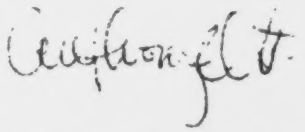
Such recourse can only be had exclusively in this Court.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

CERTIFICATE OF WORD COUNT

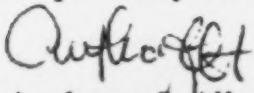
The text of this Petition for Certiorari consists of 3,206 words as counted by the MICROSOFT WORD XP processing system used to generate this brief and therefore is in compliance with the length requirement pursuant to United States Supreme Court Rule of Court 33 and 33 (1)(g)(i).



Anthony J. Allegrino II
Counsel for Petitioner P

Dated: January 8, 2008

Respectfully submitted,



Anthony J. Allegrino II
Counsel for Petitioner Pro Se
367 Windsor Highway, PMB 149
(914) 837-1765

Dated: January 8, 2008